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ABSTRACT

This paper examines the current state of voir dire procedures (the process in which prospective jurors are questioned about possible prejudgment or bias) used to detect racial attitudes in court cases involving black defendants and compares voir dire questions allowed and disallowed by the court. Data based upon an assessment of racial attitudes of 43 white psychology students was submitted to a multidimensional scaling procedure to determine the underlying structure of the defense-proposed "voir dire" questions accepted or rejected by the court. The results of the study were said to suggest that social psychology and the courts have a reciprocal interchange in which the knowledge base in psychology addresses issues in the voir dire and can be used to more effectively detect racial bias, and the voir dire process indicates areas in which present knowledge of racial attitudes can be further studied, expanded, and improved. (JCD)

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Assessing Racial Attitudes in Jury Selection[1]

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The present work deals with people whose racial attitudes matter because they are placed in positions of unusual power. When jurors hold particularly biased racial attitudes, they are in a position to implement these attitudes in ways that have drastic consequences for people of color. While the present work does not address the connection between juror attitudes and juror verdicts directly, it draws on evidence that conviction rates and sentence severity are greater for Black defendants than for whites. It seems safe to assert that the legal system is one where racial attitudes matter and where it is important to know when racial bias is operating.

The work reported here is based on a view of social psychology in which knowledge building and application are reciprocally linked to improving the quality of life (Mayo & LaFrance, 1980). In the present instance, we apply the empirical literature on racial attitudes to procedures used in the courtroom in the selection of juries. We also present a preliminary study of procedures as used in the courtroom to add to our knowledge concerning racial attitudes in general. Thus, information travels in both directions, from the social psychological literature to the courtroom and from court practices to the field of social psychology.

1 Paper presented at the American Psychological Association meeting in Los Angeles, August 1981. The authors are grateful to Martin Guyotte and Gerard Smits for statistical consultation.

The selection of a fair amd impartial jury in criminal proceedings involving Black defendants presents a challenging problem in the application of social psychological knowledge about racial attitudes and their measurement. Jury selection involves a questioning process, known as the voir dire, in which prospective jurors are queried about possible prejudgment and bias (Bonora & Krauss, 1979; Simon, 1975). The term, voir dire, meaning "to speak the truth", refers to a process intended to insure the selection of a fair and impartial jury. Fairness has been interpreted as "free from prejudice" which presumably includes racial prejudice as well prejudgments of the particular case at issue. In fact, a recent ruling in the California Supreme Court broadened the scope of voir dire questions to allow inquiry into "matters concerning which the local community or the population at large is commonly known to harbor strong feelings" (Carlson, 1981, p. 10). This ruling suggests that expert testimony might be directed at the prevalence and intensity of racial prejudice.

Based on their responses to the voir dire, prospective jurors may be designated as members of the jury or as alternates or may be challenged. Challenges for cause are unlimited in number and their merit is ruled on by the judge in each instance. Peremptory challenges by counsel are limited in number and require no justification or explanation to the court. With this brief introduction to the voir dire process, let us consider that process with regard to the assessment of racial attitudes.

The first section of this paper is based on the first author's experience as expert witness on defense motions requesting changes in

standard voir dire procedures in a number of cases involving Black defendants. The second portion of the paper presents a comparison of voir dire questions allowed by the court and those disallowed by the court. The purpose of such a comparison is to ascertain whether systematic patterns underlie what is and is not asked of potential jurors with regard to their racial attitudes. In addition to being informative in its own right, the outcome of this study may add to social psychological knowledge of racial attitude assessment.

Application of Social Psychological Knowledge Concerning Racial Attitudes

The task of the expert witness who seeks to persuade the court that social psychological research can be helpful in assessing racial prejudice in jurors involves a conceptual analysis of the voir dire process and a search through the social psychological literature on racial prejudice to find the "best fit" between knowledge and application. To the extent that expert testimony merely contributes to the proceedings in a particular case, it falls within what Haney (1980) has described as "tinkering" in established legal forms. To the extent to which such testimony sets precedents for more attention to racial atitudes in voir dire in general, it moves toward the use of psychology to effect legal change. The analysis presented here deals both with matters of form and content of voir dire proceedings pertaining to racial attitudes. Three aspects of both form and content are addressed.

Form. Voir dire proceedings typically present several problems of format with regard to assessing racial prejudice. These arise from the role or position of the questioner, the context in which the

respondent answers, and the structure of the questions themselves.

First, differences exist in the extent to which attorneys may participate in asking questions of potential jurors. Bermant (1979), in a survey of federal judges, found that 75% of them allow no oral participation by counsel in criminal cases. Data on state courts is scanty but it is clear that even in the 16 states where attorney participation in the voir dire is statutory, judges vary greatly in their implementation of the statute. Bermant (1977) concluded that there is an increasing trend toward judge-conducted voir dire.

Research in social psychology is rich in evidence that interviewer characteristics bias interviewee responses. In particular, where interviewers are of higher social class (as judges are), interviewees may be more inclined to experience evaluation apprehension and give socially desirable responses. In addition, the power of the judge in the courtroom, which is conveyed in both direct and subtle ways to jurors, may incline them further to give socially desirable responses, among which is the denial of racial prejudice. Judges are often hard to convince on this point since they tend to believe that their very power and status gives jurors an added incentive to answer honestly. Both surveys of ex-jurors and self-reports indicate that some degree of dishonesty prevails in the voir dire. The influence of class and status is only partially minimized when lawyers participate in the voir dire, but biases may be uncovered better by three interviewers than by one. Resistance to including counsel in the voir dire centers on the greater amount of time that might be consumed and on the possibility of influencing jurors during an adversary voir dire.

The second matter of form on which social psychological research

has a bearing is the tendency to question jurors in a large group. Not infrequently, racial prejudice is assessed by addressing the entire jury pool of 50 or more people with a single question such as "If there is any among you who by virtue of knowing the defendant to be of the Negro race would be prevented from reaching fair verdict, so indicate at this time." A prospective juror would have to rise among a group of strangers and acknowledge him or herself to be racially prejudiced in order to repond to this question. There is ample research to indicate that people are unlikely to single themselves out in this way; the expert witness is on solid ground in advising the court that individual (or small group) questioning of jurors is more likey to uncover potential prejudice. Questioning in a large group has the added disadvantage that prospective jurors learn from one another what the "right" and "wrong" answers are, and there is the further danger that one respondent's explicitly biased answers may taint the entire group, necessitating the summoning of a new group of potential jurors.

There is one other aspect of voir dire format to which social psychological research may be addressed. The structure of voir dire questions is typically closed-ended. This practice is believed to save time and to absolve the questioner from deciding what answers constitute prejudice. A prospective juror who is placed in the position of saying either "yes" or "no" as to whether a defendant's race would prevent that juror from reaching fair verdict is presumed to be offering unambiguous evidence of partiality or impartiality. Social science testimony concerning the inclusion of some open-ended questions on racial matters can focus on such advantages as reducing

acquiescence sets and making available information on dimensions of racial attitudes of which potential jurors may be unaware. Generally, courts have been receptive to this sort of testimony, within the limitations imposed by constant time pressures. Courts have been less open to testimony concerning the wording of questions themselves. This lack of receptivity may derive from the legal profession's view of its own greater expertise in matters of question formulation. However, given linguists' estimates that the average American adult knows fewer than ten percent of the words in the English language, it is likely that typical voir dire questions replete with double negatives, technical legal terms, and multiple ideas are poorly understood by prospective jurors.

Content. Beyond social science evidence about measurement problems, expert testimony can be helpful in conveying to the court information about the pervasiveness, diffuseness, and multidimensional nature of racial attitudes. Research concerning pervasiveness of racial attitudes is important because of the frequent assumption in voir dire that racial attitudes are at issue only in cases involving a "racial incident." The fact that race is a salient feature in person perception and that attributions are affected by knowledge of race is worth conveying to the court. Furthermore, it is generally assumed in voir dire that if asked directly, "Are you racially prejudiced?", persons under oath will respond truthfully. In addition to pointing out features of the voir dire that make such admissions difficult, expert witnesses may cite evidence that people are often unaware of their prejudices. The diffuseness of racial attitudes makes is possible for people to be convinced that they are impartial with

regard to race while in fact holding a variety of prejudicial assumptions. Finally, as Woodmansee and Cook (1967) have shown, racial attitudes are multidimensional such that people who oppose affirmative action legislation are not also the same people who resent working with Blacks. Such research findings are useful in persuading the court to ask more than one or two questions in assessing racial attitudes of prospective jurors.

Knowledge Derived from an Analysis of Voir Dire Questions

In the preceding section, the goal has been to delineate the application of research findings on racial attitudes to the voir dire. Voir dire proceedings can also contribute to social psychological understanding of racial attitudes.

With that goal in mind, we undertook an empirical study of voir dire racial attitude questions accepted and rejected by the court to ascertain whether differences exist in the underlying structure of such questions. We sought to understand what assumptions about the nature of racial attitudes are made by judges. For example, are some questions rejected by judges because they seem to be too personal and hence conflictual to ask?

With the assistance of the National Jury Project, we obtained a pool of 27 questions submitted to state courts for voir dire in cases involving Black male defendants. From these, we randomly selected 10 accepted and 10 rejected for further study. In the interest of completeness, we sought a parallel set of questions submitted for voir dire by prosecutors and found that the state proposed no questions on racial attitudes in these cases involving Black defendants. This may indicate either that the prosecution has no interest in prospective

jurors' racial attitudes or that prosecutors assume that the prevailing public racial attitudes pose no problem for the prosecution's case. In order to examine the underlying structure of the defense-proposed voir dire questions accepted or rejected by the court, we submitted them to a multidimensional scaling procedure.

Procedure. To generate data for this multidimensional scaling, 43 white introductory psychology students (14 men and 29 women) at Boston University were asked to evaluate the voir dire questions. The final analysis was based on data from 40 respondents, three protocols being discarded as incomplete. Participants were volunteers and received course credit for participation.

The voir dire questions were presented in paired format, with order of questions randomly determined and pages randomly sorted in each respondent booklet to control for practice or fatigue effects. Each of the 20 voir dire questions was paired with every other question, yielding 190 paired comparisons which students rated for degree of similarity/dissimilarity on seven-point Likert-type scales.

Participants filled out the questionnaires in three group settings on two separate days. The time participants spent filling out the scales varied between 20 and 45 minutes, with most people taking about 30 minutes. When the participants arrived, the study was described briefly as one in which "we are interested in the issue of selecting jurors in criminal proceedings involving Black defendants. In this study we are comparing questions asked of potential jurors with those that were not allowed to be asked. What we want to find out is whether systematic patterns underlie what is and is not asked potential jurors with regard to their racial attitudes." Participant

questions were invited before and after the study and study results have been mailed to participants who requested them.

Results and discussion. A multidimensional scaling procedure was used to generate solutions of one to four dimensions. A two-dimensional solution was accepted as an adequate representation of the participants' perceptions of the similarity of the voir dire questions. The interpretability of additional dimensions was low with commensurate reductions in stress values. The two dimensional non-metric solution described here had a stress value of .19 (using Kruskal's formula; Young's s-stress equalled .25). We interpreted the first dimension as legal/attitudinal vs personal/experiential. This dimension correlated significantly with the status of the questions, that is, with whether questions were accepted or rejected by the judge (point biserial correlation = .45, p .05). Voir dire questions which dealt with the prospective juror's attitude toward the law and criminal acts were more likely to be accepted by the court than were questions asking about juror's personal experience with Black people. Typical questions from the legal/attitudinal end of the dimension are: "Can you fairly and impartially decide this case on the basis of the evidence and law, disregarding the race of the defendant?" and, "Do you realize that the presumption of innocence applies to a Black defendant as well as a white defendant?" Representative questions from the personal/experiential end of that dimension are: "How do you feel about Black people living in your neighborhood?" and, "How would you describe your experience with Black people at your job?"

What does this dimension tell us about the underlying assumptions guiding judicial acceptance or rejection of voir dire questions? That

judges were more willing to ask people about their racial attitudes involving the law than about people's experience with Blacks suggests first that the judges ask what they themselves know about. They ask about the legal world in which they live and work. This may seem to be a perfectly natural decision, but consider that legal questions involving such matters as racial aspects of presumption of innocence, for example, are just the sort of questions which are likely to be most unfamiliar to prospective jurors.

Judges' preferences for racial attitude questions dealing with legal rather than more general matters make yet a further assumption. Judges appear to assume that since the jury is to make determinations of fact concerning a crime, it is bias concerning crime and law that needs to be identified in the voir dire. It can be argued, however, that matters of crime inhere as much in the community at large as they do in the courts, and that to reject questions dealing with a prosective juror's life experiences with people like the defendant is to reject information concerning prejudices likely to be triggered when evidence about the crime is presented. This is especially important given clear research evidence that direct questioning substantially underestimates the degree of antiblack prejudice that exists among American whites (Crosby, Bromley & Saxe, 1980). Hence direct voir dire has limitations for exposing racial bias, but broad-ranging questions are more likely to elicit such bias.

Considering now what this scaling dimension can tell social psychologists about racial attitude assessment, we note that attitude scales commonly used in the field do not include items about crime. For example, the 110 item Woodmansee and Cook (1967) scale delineates

11 dimensions of racial attitude and contains not one item dealing with crime and law. Given the results of the present study and other evidence of the association of race and crime in the public mind, it may be worth considering whether such content may constitute yet another aspect of the multidimensionality of racial attitudes.

Another distinction between accepted and rejected questions which is pertinent to our earlier comments about voir dire question format is the fact that 9 of the 10 accepted questions were close-ended, that is, required a yes-no reply. Of the 10 rejected questions, only four were close-ended. This structural dimension overlaps with the attitudinal dimension described above.[2] In other words, legal/attitudinal questions are more often framed in close-ended ways and personal/experiential in open-ended formats. A hierarchical regression analysis holding question form constant renders the correlation between the attitudinal/personal dimension and acceptance or rejection of questions non-significant. If indeed question format were found to be the stronger factor in determining judges' acceptance of questions, close-ended experiential questions might be tried, although they may be less informative to the court. Similarly open-ended questions in legal/attitudinal domains might be suggested, thus placing both alternatives before the court.

The second dimension yielded by the multidimensional scaling procedure was interpreted as an evaluative one with negatively worded questions contrasted with neutral ones. The point-biserial correlation between this dimension and the accepted/rejected status of the voir dire questions was .34, not statistically signficant. Therefore this dimension does not distinguish between accepted and

[2] We are indebted to James M. Jones for pointing this out.

rejected questions. Nonetheless, it is a salient feature of the dimensional space for the respondents who judged the questions on their similarity. An example from the negative end of the evaluative dimension is, "If Black people moved into your neighborhood would you be more afraid of crime than you are now?" An example of a neutrally worded question is "Other than physically, how do you think Black people differ from white people?"

Interpretations of the dimension are not self-evident. It may represent no more than the commonly identified evaluative component in meaning that arises in semantic differential ratings of practically anything. It may similarly reflect the evaluative component in attitude measurement whereby prejudice is regarded as a negative affective stance towards some group or person. Whatever the interpretation, it is interesting to note that the contrast to negativity in the dimension is neutral rather than positive. Apparently no questions that assess positive racial attitudes are posed in the voir dire (or for that matter, in most racial attitudes scales). For example, the Woodmansee and Cook (1967) measure uses items concerned with "Negro superiority" as a type of lie scale. This too may be a fruitful area for further research, especially considering the fact that a small number of Black prospective jurors are occasionally found even in predominantly white jurisdictions.

In conclusion, we have tried to show, in the domain of racial attitude assessment, that social psychology and the courts can have a reciprocal interchange in which the knowledge base in psychology speaks cogently to some issues in the voir dire, and the voir dire process indicates areas in which present knowledge of racial attitudes can be improved.

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